

ORDINANCE NO. 15608

AN ORDINANCE AMENDING CHAPTER 23, SECTION 23-8 "NOISE," OF THE CODE OF THE CITY OF FORT WORTH (1986), AS AMENDED, BY CHANGING THE DAYS THAT CONSTRUCTION WORK IS ALLOWED AND, CHANGING THE HOURS IT IS ALLOWED ON THOSE DAYS; PROVIDING THAT THIS ORDINANCE SHALL BE CUMULATIVE; PROVIDING A SAVINGS CLAUSE; PROVIDING A SEVERABILITY CLAUSE; PROVIDING A PENALTY CLAUSE; PROVIDING FOR PUBLICATION; AND PROVIDING AN EFFECTIVE DATE.

Whereas, the City Council has received complaints from various developers that prohibiting work on Saturday hinders progress; and

Whereas, a case study of various cities in Texas reveals that most cities allow construction work on Saturdays; and

Whereas, a nuisance has been defined as anything that obstructs, impairs or destroys the reasonable, peaceful and comfortable use of property; and

Whereas, the City Council finds that most construction work by its very nature is loud and tends to disrupt the peaceful and quiet enjoyment of property in the immediate vicinity thereof; and

Whereas, the Supreme Court has held that cities, in the exercise of the police power, may prohibit certain acts or things under some conditions and circumstances when those acts interfere with the rights of others; and

Whereas, the City Council hereby intends to balance the rights of those who wish to do construction work with the rights of those who desire quiet, comfort, and enjoyment of their private residences; and

Whereas, the City Council finds it rational and prudent to prohibit “unreasonably loud” noise created by construction work between the hours of 8:00 p.m. and 7:00 a.m. Monday through Friday and 8:00 p.m. and 9:00 a.m. Saturday, and all hours on Sunday.

NOW THEREFORE BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF FORT WORTH, TEXAS:

SECTION 1.

That Chapter 23, “OFFENSES AND MISCELLANEOUS PROVISIONS”, Section 23-8, “NOISE”, of the Code of the City of Fort Worth, Texas (1986), as amended, is hereby further amended by adding additional work hours during weekdays and adding Saturday as an allowed work day for construction, to read as follows:

A. Definitions.

Unreasonable noise.

Any unreasonably loud, disturbing, and unnecessary noise which causes material distress, discomfort or injury to persons of ordinary sensibilities in the immediate vicinity thereof; or

Any noise of such character, intensity and continued duration, which substantially interferes with the comfortable enjoyment of private homes by persons of ordinary sensibilities.

B. Violations.

- 1) All unreasonable noise is declared to be a nuisance and is hereby unlawful and prohibited.
- 2) Noise created by the following acts is presumed to be unreasonable, but such enumerated acts shall not be deemed to be exclusive:

- (a) Musical instruments. The playing of any radio, phonograph or other musical instrument in such

manner or with such volume, particularly during the hours between 10:00 p.m. and 7:00 a.m., as to annoy or disturb the quiet, comfort or repose of persons of ordinary sensibilities in any dwelling, hotel or other type of residence.

- (b) Loudspeakers and amplifiers. The use of any stationary loudspeaker or amplifier of such intensity that annoys and disturbs persons of ordinary sensibilities in the immediate vicinity thereof; the use of any stationary loudspeaker or amplifier operated on any weekday between the hours of 10:30 p.m. and 7:00 a.m., or at any time on Sunday; provided, however, that it shall be a defense to prosecution under this subsection for operating such loudspeakers and amplifiers at such hours on weekdays or on Sunday that the same were operated at a public event on property owned by the city and advance permission for such operation was obtained from the park and recreation director of the city.
- (c) Animals and birds. The keeping of any animal or bird which, by causing frequent or long-continued noise, shall disturb the comfort and repose of any person of ordinary sensibilities in the immediate vicinity.
- (d) Horns or other signal devices on vehicles. The continued or frequent sounding of any horn or signal device on any automobile, motorcycle, bus or other vehicle except as a danger or warning signal; the creation by means of any such signal device of any unreasonably loud or harsh device for any unnecessary and unreasonable period of time.
- (e) Operation of vehicles. The running of any automobile, motorcycle or vehicle so out of repair, so loaded or in such manner as to create loud or unnecessary grating, grinding, jarring or rattling noise or vibrations.
- (f) Steam whistles. The blowing of any steam whistle attached to any stationary boiler except to give notice of the time to begin or stop work or as a warning of danger.
- (g) Exhaust without mufflers. The discharge into the open air of the exhaust of any steam engine,

stationary internal combustion engine, motor vehicle or boat engine except through a muffler or other device, which will effectively prevent loud or explosive noises therefrom.

- (h) Devices operated by compressed air. The use of any mechanical device operated by compressed air, unless the noise to be created is effectively muffled and reduced.
- (i) Construction work. Noise created by construction activities within three-hundred (300) feet of an occupied residential structure, involving the erection of, including excavation of, demolition of, alteration to, or repair work on any building, structure, or flatwork before 7:00 a.m. or after 8:00 p.m. Monday through Friday, before 9:00 a.m. or after 8:00 p.m. Saturday, or any time on Sunday.
- (j) Near schools and hospitals. The creation of any excessive noise on any street adjacent to any school or institution of learning while the same is in session or adjacent to any hospital which unreasonably interferes with the workings of such institutions, provided conspicuous signs are displayed in such manner indicating that the same is a school or hospital street.
- (k) Loading and unloading vehicles, etc. The creation of any loud and excessive noise in connection with the loading or unloading of any vehicle or the opening and destruction of bales, boxes, crates and containers.
- (l) Peddlers, hawkers, etc. The raucous shouting and crying of peddlers, hawkers and vendors, which disturbs the peace and quiet of the neighborhood.
- (m) Use of drums, etc., to attract attention. The use of any drum, loudspeaker or other instrument or device for the purpose of attracting attention, by the creation of noise, to any performance, show or sale of merchandise.

- (n) Railroads. The blowing or sounding of any steam whistle, horn or signal device on any engine, locomotive car or vehicle adapted to the rails of a railroad in the city, except as a warning or danger signal to persons or animals approaching, crossing or using the tracks of the railroad, shall constitute a violation of this section.

C. Defense.

It shall be a defense to prosecution under subsection (B) that the noise created was reasonable under the totality of the circumstances existing in each case.

SECTION 2.

This ordinance shall be cumulative of all provisions of ordinances and of the Code of the City of Fort Worth, Texas (1986), as amended, except where the provisions of this ordinance are in direct conflict with the provisions of such ordinances and such Code, in which event conflicting provisions of such ordinances and such Code are hereby repealed.

SECTION 3.

All rights and remedies of the City of Fort Worth, Texas, are expressly saved as to any and all violations of the provisions of the ordinances amended in Section One (1), which have accrued at the time of the effective date of this ordinance and, as to such accrued violations and all pending litigation, both civil and criminal, whether pending in court or not, under such ordinances, same shall not be affected by this ordinance but may be prosecuted until final disposition by the courts.

SECTION 4.

It is hereby declared to be the intention of the City Council that the sections, paragraphs, sentences, clauses and phrases of this ordinance are severable, and, if any

phrase, clause, sentence, paragraph or section of this ordinance shall be declared unconstitutional by the valid judgment or decree of any court of competent jurisdiction, such unconstitutionality shall not affect any of the remaining phrases, clauses, sentences, paragraphs and sections of this ordinance, since the same would have been enacted by the City Council without the incorporation in this ordinance of any such unconstitutional phrase, clause, sentence, paragraph or section.

SECTION 5.

Any person, firm or corporation who violates, disobeys, omits, neglects or refuses to comply with or who resists the enforcement of any of the provisions of this ordinance shall be fined not more than Five Hundred Dollars (\$500.00) for each offense. Each day that a violation exists shall constitute a separate offense.

SECTION 6.

That the City Secretary of the City of Fort Worth, Texas is hereby directed to publish the caption, Section 1, Section 5, and the effective date of this ordinance for two (2) days in the official newspaper of the City of Fort Worth, Texas, as authorized by Section 2, Chapter XXV of the Charter of the City of Fort Worth, Texas, and by Section 52.013, Texas Local Government Code.

SECTION 7.

This ordinance shall be effective upon its passage and publication as required by law.

APPROVED AS TO FORM AND LEGALITY:

By: Carla Cook
Assistant City Attorney

ADOPTED: July 8, 2003

EFFECTIVE: July 16, 2003

Mayor and Council Communication

DATE 7/8/03	REFERENCE NUMBER G-13995 REVISED-2	LOG NAME 12NOISE	PAGE 1 of 2
SUBJECT	ADOPTION OF ORDINANCE AMENDING CITY CODE CHAPTER 23, "OFFENSES AND MISCELLANEOUS PROVISIONS," SECTION 23-8, "NOISE"		

RECOMMENDATION:

It is recommended that the City Council adopt the attached ordinance amending Chapter 23, Article 1, Section 23-8, Subsection (c)(9), to allow construction work Monday through Friday between 7:00 a.m. and 8:00 p.m. and Saturday between 9:00 a.m. and 8:00 p.m.

DISCUSSION:

Currently, the City Code does not allow construction work after 6:00 p.m. Monday through Friday and does not allow construction work at all on Saturday and Sunday.

Research shows that most cities allow construction work on Saturdays. Further, considering deadlines and varying weather conditions, it is now common practice for companies to build on Saturdays. Also, allowing work to proceed until 8:00 p.m. is common among other cities.

This provision should not interfere with the citizens' enjoyment of property, considering the limited hours and the fact that the noise created must still be reasonable under Section 23-8, subsection (a).

The City Council asked the City Attorney's Office to investigate the current wording of this ordinance, compared with the ordinances of the other cities regarding this matter, and recommend changes if appropriate. The changes recommended are consistent with findings from other cities.

The proposed ordinance was originally taken to the Government and Neighborhood Relations Committee (GNRC) in May 2003. The GNRC requested that it be forwarded to the City Council for full consideration and a public hearing. As a result, the City Council considered the original M&C G-13995 on June 17, 2003.

The City Council scheduled this item for three public hearings, and postponed action until July 8, 2003. Further, staff was directed to report again to the GNRC on July 1, 2003. The first public hearing was held on June 24, 2003, with staff reporting to the City Council.

Mayor and Council Communication

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FISCAL INFORMATION/CERTIFICATION:

The Finance Director certifies that this action will have no material effect on City funds.

JP:k

Submitted for City Manager's Office by:	FUND (to)	ACCOUNT	CENTER	AMOUNT	CITY SECRETARY
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